

83-1952

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL  
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL  
DEBORAH J. COOPER



ATTORNEYS  
DANIEL J. MULLEN  
JAMES D. CAHILL, III  
RONALD F. RODGERS  
JEFFREY R. HOWARD  
G. DANA BISBEE  
GREGORY W. SWOPE  
PETER T. FOLEY  
STEVEN M. HOURAN  
EVE H. OYER  
LESLIE J. LUDTKE  
ROBERT P. CHENEY, JR.

THE ATTORNEY GENERAL

STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6397

March 21, 1983

ASSISTANT ATTORNEYS GENERAL  
JOHN T. PAPPAS  
JAMES E. TOWNSEND  
ANNE R. CLARKE  
MARC R. SCHEER  
DONALD J. PERRAULT  
MARTIN R. JENKINS  
PETER W. MOSSEAU  
BETSY S. WESTGATE  
EDWARD L. CROSS, JR.  
MARTHA V. GORDON  
PETER C. SCOTT  
MICHAEL A. PIGNATELLI  
BRIAN T. TUCKER  
PAUL BARBADORO  
BRUCE E. MOHL  
JOHN A. MALMBERG  
DOUGLAS L. PATCH  
LORETTA S. PLATT

Mr. James R. MacKay, Chairman  
State Council on Aging  
14 Depot Street  
Concord, New Hampshire 03301

Dear Mr. McKay:

You have asked for our opinion concerning whether the Council on Aging may make a subgrant to its office of the ombudsman, in addition to funds which are made available to that office in the budget for the Council on Aging. It is our informal opinion that the Council may not increase the funding for the ombudsman program through a subgrant to its office of the ombudsman.

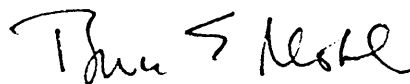
As we indicated in our letter of September 27, 1982, concerning the ombudsman program, the ombudsman is governed by both state and federal law, although the office of the ombudsman exists only as a creation of state law. RSA 167-A:21, et seq. Moreover, the activities of the Council on Aging, including the ombudsman program, are subject to the legislative appropriation process within state government. The amount available for expenditure for any particular activity of the Council is limited to the amount appropriated by the legislature. RSA 9:19. Expenditure in excess of the amount appropriated for any purpose by the legislature, may result in personal liability on the part of the person authorizing the excess expenditure, RSA 9:20, or an action of removal from office. RSA 9:21. Thus, to the extent that the legislature has determined the amount available for the office of the ombudsman, the Council may not increase that amount without additional budgetary authority from the legislature. I should note that, if such a subgrant award were otherwise proper under federal law and regulations, the Council may seek legislative approval to increase the amount in its budget for the ombudsman program, the additional revenue for the increase to be derived from the subgrant.



With respect to this latter point, I have some doubt that under the applicable federal regulations, that the Council may, in effect, make a subgrant to itself for the ombudsman program. The governing federal regulations, 45 C.F.R. §74, authorize a "subgrant" to "an eligible subgrantee". In this instance there is a serious question whether the office of ombudsman is an eligible subgrantee. In effect, the Council would be acting both as the granting agency and the receiving entity. The federal regulations, in defining "subgrantee" specify that "[t]he subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document" 45 C.F.R. §74.3. This section may have been intended to prevent just such a division within a granting agency in order to render one of its components an eligible subgrantee. In the final analysis, however, the appropriateness of such arrangements under the federal regulations is a matter for the federal government to decide. I understand that in informal discussions with the office of the Department of Health and Human Services, your staff has been advised that such an arrangement would be viewed as impermissible under the regulations. In the event that expenditures were made and determined to be improper by the federal officials, the State may be obligated to refund the amounts so expended.

In conclusion, our opinion is that you may not through a subgrant award increase the funding available to the office of the ombudsman within the Council on Aging. In the event that the Council secures the approval of the federal government to such a funding arrangement, and seeks to increase the amount of funding to the office of ombudsman through a subgrant, the Council should seek an increase in the appropriation available for the office of the ombudsman.

Sincerely yours,



Bruce E. Mohl  
Assistant Attorney General  
Division of Legal Counsel

BEM:alh  
83-19-I